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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/193,653	11/17/98	MARSHALL W	P01936US4

HM22/0116

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EXAMINER	
ZEMAN, R	
ART UNIT	**PAPER NUMBER**
1645	9

DATE MAILED: 01/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/193,653	Marshall
Examiner	**Group Art Unit**
Robert A. Zeman	1645

☒ Responsive to communication(s) filed on *Oct 25, 2000*.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-22* is/are pending in the application.

Of the above, claim(s) *20-22* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-19* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Response to Amendment

Amendment filed on 10-25-2000 is acknowledged. Claims 1, 8, 10, 12 and 17-19 were amended. Claims 1-19 are pending and currently under consideration.

Claim Objections Withdrawn

The objection to claim 12 for the improper use of an abbreviation is withdrawn in light of the amendment thereto.

Claim Rejections Withdrawn

The rejection of claim 1 under 35 U.S.C. 112, second paragraph, for being indefinite by use of the phrase "filtering said separated product to remove any stress response products have a molecular weight greater than 10 kDa" is withdrawn in light of the amendment thereto.

The rejection of claim 8 under 35 U.S.C. 112, second paragraph, for being indefinite by use of the term "37 C or less" is withdrawn in light of the amendment thereto.

The rejection of claim 10 under 35 U.S.C. 112, second paragraph, for being indefinite by use of the term "stationary phase" is withdrawn in light of the amendment thereto.

The rejection of claim 12 under 35 U.S.C. 112, second paragraph, for reciting a limitation without a proper antecedent basis is withdrawn in light of the amendment thereto.

The rejection of claims 17-19 under 35 U.S.C. 112, second paragraph, for being indefinite by use of the phrase "sequential periods of stress" is withdrawn in light of the amendment thereto.

The provisional rejection of claims 1-19 on the grounds of obvious type double patenting over the claims 1-14 of U.S. Patent 5,840,318 is withdrawn in light of the filed Terminal Disclaimer (Paper No. 8).

The terminal disclaimer filed on October 25, 2000 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 5,840,318 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The rejection of claims 1-19 under 35 U.S.C. 103(a) for being obvious over U.S. Patent 5,840,318 is withdrawn. The filed Terminal Disclaimer (Paper No. 8) has rendered said rejection moot.

Claim Rejections Maintained

The rejection of claims 1-19 under 35 U.S.C. 103(a) for being unpatentable over De Vuyst et al (Microbiology Vol. 142. 1996, pages 817-827) is maintained for reasons of record. Applicant agues that De Vuyst et al. does not teach or suggest the claimed unique invention of the instant application. Applicant further argues that there are differences between the bacteriocins disclosed by De Vuyst et al. and the stress response products of the instant invention. Applicant further recites portions of an amendment and/or a 132 amendment presented

during the prosecution of separate application (application for U.S. Patent 5,840,318). Applicant asserts that since the bacteriocins disclosed by De Vuyst et al. and the stress response products of the instant invention are different the rejection under 35 U.S.C. 103(a) was improper. Applicant's arguments have been fully considered and have been found to be non-persuasive. Applicant's arguments are based on amendments and declarations not of record in this application. Applicant is reminded that each case is examined based on its own merits and only documents of record will be considered.

The rejection of claims 1-15 and 17-19 under 35 U.S.C. 103(a) for being unpatentable over De Vuyst et al (Microbiology Vol. 142. 1996, pages 817-827) in view of Nanji (US Patent 5,413,785) is maintained for reasons of record. Applicant agues that De Vuyst et al. does not teach or suggest the claimed unique invention of the instant application. Applicant further argues that there are differences between the bacteriocins disclosed by De Vuyst et al. and the stress response products of the instant invention. Applicant further recites portions of an amendment and/or a 132 amendment presented during the prosecution of separate application (application for U.S. Patent 5,840,318). Applicant asserts that since the bacteriocins disclosed by De Vuyst et al. and the stress response products of the instant invention are different the rejection under 35 U.S.C. 103(a) was improper. Applicant's arguments have been fully considered and have been found to be non-persuasive. Applicant's arguments are based on amendments and

declarations not of record in this application. Applicant is reminded that each case is examined based on its own merits and only documents of record will be considered.

The rejection of claim 16 under 35 U.S.C. 103(a) for being unpatentable over De Vuyst et al (Microbiology Vol. 142. 1996, pages 817-827) in view of Perdigon et al. (Journal of Food Protection Vol 53 No. 5, pages 404-410, 1996) or Emery et al. (U.S. Patent 5,538,733) is maintained for reasons of record. Applicant agues that De Vuyst et al. does not teach or suggest the claimed unique invention of the instant application. Applicant further argues that there are differences between the bacteriocins disclosed by De Vuyst et al. and the stress response products of the instant invention. Applicant further recites portions of an amendment and/or a 132 amendment presented during the prosecution of separate application (application for U.S. Patent 5,840,318). Applicant asserts that since the bacteriocins disclosed by De Vuyst et al. and the stress response products of the instant invention are different the rejection under 35 U.S.C. 103(a) was improper. Applicant's arguments have been fully considered and have been found to be non-persuasive. Applicant's arguments are based on amendments and declarations not of record in this application. Applicant is reminded that each case is examined based on its own merits and only documents of record will be considered.

Conclusion

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

This application contains claims 20-22, drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (703) 308-7991. The examiner can be reached between the hours of 7:30 am and 4:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, Donna Wortman, Primary Examiner can be reached at (703) 308-1032 or the examiner's supervisor, Lynette Smith, can be reached at (703)308-3909.

DONNA WORTMAN
PRIMARY EXAMINER

Robert A. Zeman

January 11, 2001